IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 331 OF 2005

Shri Jiyaji Shinde,
Pimprigaon, Pune - 18. ... Appellant
(Ori. Def.No.2.)

V/s

1. Smt. Noorjhahan w/o Hanif Saifi,
Kharadwadi (Bukow wold col.E-l),
Pune - 18; & anr. ... Respondents

2. Shri Balasahib Raghunath Dalvi,
Pimpri, Pune - 18. ... Respondents
(Resp.No.1 Ori.Plaintiff
& Resp.No.2 Ori.Def.No.1)

Mr. V.D. Raut for the appellant.

Mr. Kiran Joshi for the Resp. No.1.

CORAM: P.V. KAKADE, J.

DATED: 28TH JUNE, 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the learned Addl. District Judge, Pune, dated 3.1.2003 allowing the appeal and setting aside the judgment and decree passed by the Trial Court who had dismissed the suit by order dated 30.10.1996.

2. I have heard the learned counsel for the appellant as well as respondents. Perused the record.

3. The plaintiff had filed the suit for removal of unauthorized construction from the land belonging to him. It is the case of the plaintiff that he is owner of the plot land bearing Survey No. 159/A/1 4A/2 corresponding to City Survey No. 5274 situated at Kharalwadi, Pimpri, Pune, admeasuring 258 sq.mtrs. which he had purchased by executing the sale deed dated 18.6.1992. Before purchasing the suit land, plaintiff had called upon objection by publishing notice in local news paper and it is contended that at that time the defendants were aware of the fact that defendant No.1 was in occupation of the suit land, however, he was informed by the vendor that defendant No.1 is unauthorisedly occupying the said property. Inspite of the pursuation, the defendants did not vacate the property inspite of notice issued to him. Hence the suit came to be filed.

The defendants chllenged the suit on various grounds. Defendant No.1 denied the ownership of the plaintiff over the suit property. According to him, the suit land was purchased by the father of defendant No.2 on

18.12.1976. Thereafter defendant No.1 became tenant in the shed erected in the property towards Northern side. Accordingly, defendant No.1 had denied the title of the plaintiff. Defendant No.2 who is son of deceased Sopan Genu Shinde has come with the case that his father purchased the suit property by registered sale deed dated 18.2.1970 from original vendor Kushaba Kashiba Kalpile. Thereafter his father constructed 8 rooms and remaining vacant land was given to the defendant No.2 where defendant No.1 has constructed shed and thus defendant No.1 is the tenant. It was further stated that defendant No.1 was paying rent of Rs.150/- and had denied the title of concerned owner.

On the basis of these pleadings, the learned Trial Judge proceeded to adjudicate the dispute on merits and came to the conclusion that the plaintiff failed to prove the ownership of the suit property by virtue of sale deed dated 18.6.1992 and further held that the plaintiff did not prove that defendant No.1 was in authorised occupation of the suit premises since prior to his purchase of the property. It was further held that defendant No.1 was in possession of the suit property since the year 1978-79 as per the agreement dated 8.6.1980 with Sopan Genu Shinde. On such and other

grounds the suit came to be dismissed.

4. The appeal was carried to the District Court. The learned Addl. District Judge, Pune, after hearing both parties came to the conclusion that the learned Trial Judge had erred in appreciating the evidence and proceeded to hold that the appellant had proved that the Trial Court had erred in holding that the suit property is owned by Jiyaji Shinde and he had legally authorised the respondent No.1 Balasaheb Dalvi as his tenant and as such the appeal came to be allowed. Hence the present appeal.

5. At the outset, it may be noted that the entire scenerio revealed from the record shows that no substantial question of law is involved in this appeal and all the dispute revolves around the factual contentions which are seen to be properly appreciated by the lower appellate Court Judge. On perusal of the judgment of the lower Appellate Court it is seen that there was obviously misunderstanding by the Trial Court by considering the land of C.T.S.Nos. 5274 and 5275 as part of land Survey No. 159/A/1/4A/2, though survey number of the land owned by respondent No.2 and appellant was common but the site numbers were divided

in various city survey numbers. This obvious error is seen to be properly rectified by the learned lower appellate Court Judge.

6. The learned counsel for the appellant sought to submit that the judgment of the lower appellate Court was based mainly on the ground that he had not properly appreciated the evidence in respect of documents of map drawn by the cadestral surveyor from the D.I.L.R. office. According to him, those were not properly proved and, therefore, reliance thereon was not proper as observed by the lower appellate Court Judge. In support of this submission, he sought to rely upon the judgment of the Single Judge of this Court in the case of **Ramchandra s/o Bhikaji Jagtap v/s Dudharam Langruji Padvekar & ors., reported in 2003 (4) All.M.R. 990**, which is on the point of scope of Sec. 83 of the Evidence Act with observation that maps or plans for the purpose of any cause, must be proved by the person who had prepared them and there is no presumption of accuracy in respect of map or plan which is made for a particular cause. Obviously, this ruling and ratio thereof is not applicable in the present case because the maps in the present case which are on record are part of D.I.L.R. office record and were not drawn by

the Court Commissioner for the particular cause of suit itself. In other words, the maps relied upon by the lower appellate Court were part of the public record and, therefore, rightly relied upon by the lower appellate Court Judge especially when they were produced through the witness from the office of the D.I.L.R.

7. In this factual matrix and in view of the fact that there is no substantial question of law involved in the appeal, I am not inclined to entertain the present appeal. This is more so when it is seen from the record that the lower appellate Court Judge has properly appreciated the entire evidence and has come to the said conclusion. Time and again, it is held by the Apex Court that the second appeal cannot be decided merely on equitable grounds. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first Appellate Court. It is held that the lower appellate Court should not ordinarily reject the witnesses accepted by the Trial Court in respect of the credibility but even where it has rejected the witnesses accepted by the Trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory reasons for

doing. In the present case before us, it is seen that the lower appellate Court Judge concluded the disputed issues in proper perspective and, therefore, it would not call for interference.

In the result, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application No. 28 of 2005 also stands dismissed with no order as to costs.

(P.V. Kakade, J.)